

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

:ORDER:

Bhiya Ram Punia

Vs

State of Raj. & Ors.

S. B. CIVIL WRIT PETITION NO.3636/2002
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

Date of Order : 14th Feb., 2005

<><><>

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.R.S.Saluja, for the petitioner.

Mr.L.R.Upadhayay, Dy.GA, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

Brief facts of the case are that a pre-audit was conducted in the
year 1981-82 and 1982-83 in relation to Gular Gram Sewa Sahakari

Samiti Ltd. and the petitioner, who was working as the Chairman of the said Samiti was found guilty for embezzlement of Rs.1,21,994.41/- in the pre-audit, copy of which is placed on record as Annex.1, it was ordered that the said amount alongwith interest @ 18% per annum from 13th June, 1989 may be recovered from the petitioner and a cost of Rs. 500/- was imposed against him. The petitioner preferred appeal which was registered being appeal no.179/1992 before the Addl. Registrar, Cooperative Societies, Jodhpur, which was allowed by the Addl. Registrar, Cooperative Societies, Jodhpur vide order dated 28.10.1993. Before the appellate authority this was specifically argued that it was the duty of the prosecution to prove their case by producing evidence and the prosecution failed to prove charges as no evidence was produced by the prosecution. It is also submitted that the finding could not have been recorded on the basis of only enquiry report. Not only this, but even the Manager of the Society Sh. Durgaram submitted that he had no knowledge about the facts of the case. All these pleas were recorded by the appellate authority and, thereafter, the appellate authority held that the enquiry under Section 74(1) of the Rajasthan Cooperative Societies Act 1965 itself was conducted without looking into the record. The appellate authority, therefore, remanded the matter to the Joint Registrar, Cooperative Societies, Jodhpur, Division Jodhpur vide order dated 28.10.93 (Annex.2). It appears from the

Annex.5 dated 28.9.99 passed against the petitioner by the Regional Audit Officer, Cooperative Societies, Ajmer Division Ajmer that after remand when matter came before the Joint Registrar, Cooperative Societies, Jodhpur, Division Jodhpur, he remanded the matter to the Regional Audit Officer, Cooperative Societies, Ajmer Division Ajmer. It is mentioned in the impugned order that fresh enquiry was conducted under Section 74(1) of the Act of 1965 and the report was submitted, which is dated 24th April, 1998. It is mentioned in the said enquiry report that record was looked into and facts were found correct and, thereafter, again it has been held that the petitioner did not deposit Rs.1,21,994.412/- and, therefore, same may be recovered from the petitioner.

The petitioner preferred appeal against the said order dated 28.9.99 passed by the Regional Audit Officer before the Joint Registrar (Appeals), Cooperative Societies, Jodhpur under Section 124 of the Act of 1965. Before the appellate authority, again petitioner submitted that the enquiry report cannot be accepted as a piece of evidence unless it is proved. It is also submitted that the enquiry report sought to be used against the petitioner has not been proved by producing auditor. The petitioner also raised several grounds in his appeal and pressed several grounds during arguments, which is apparent from the

impugned order passed by the Joint Registrar (Appeals), Cooperative Societies, Jodhpur dated 29th Nov., 2000 (Annex.7). However, the appellate authority relying upon few orders passed earlier and a document dated 19th May, 1984, which purports to say that petitioner admitted his guilt, dismissed the appeal of the appellant-petitioner vide order dated 29th Nov., 2000 (Annex.7). The petitioner preferred revision petition before the Government, which was heard by the State Minister. The revision petition was dismissed by the State vide order dated 18th Sept., 2001, copy of which is placed on record as Annex.9.

According to learned counsel for the petitioner, the pre-audit was conducted behind the back of the petitioner and the proceedings were initiated under Section 74(1) of the Rajasthan Cooperative Societies Act, 1965. That proceedings were set aside by the appellate authority vide order dated 28.10.93 on the ground that no opportunity of hearing was given to the petitioner and the documents were not proved by the prosecution. Despite this, after remand, the authorities again committed the same mistake and more grave mistake is that the appellate authority influenced by the earlier audit report and the orders passed in this case and influenced by the document, which were not the basis of the order dated 29th Sept., 1999 passed by the Regional Audit Officer against the petitioner, dismissed the appeal of the petitioner. It

is also submitted that since there was no proper enquiry and, therefore, the appellate authority even looked into all those documents and relied upon, which were never brought to the notice of the petitioner and the petitioner was not made aware that these documents will be used against the petitioner at any point of time and the appellate authority decided the matter as though the appellate authority itself is the enquiring authority and has right to take any document as piece of admitted evidence. It is also submitted that the revisional authority virtually has not passed any reasoned order and, therefore, the orders passed by all the authorities deserve to be set aside.

Learned counsel for the respondents submits that the matter was remanded for fresh enquiry and, thereafter, again petitioner was found guilty in the enquiry in which report was submitted on 24th April, 1998 and in view of the fact that petitioner failed to prove that he deposited the amount of the society in the bank after taking a plea that he deposited the amount in the bank, therefore, the petitioner was rightly held guilty. It is also submitted that the petitioner did not raise any other objection before the Regional Audit Officer and, therefore, the Regional Audit Officer rightly passed the order. It is also submitted that each and every argument of the petitioner was considered by the appellate authority, which is apparent from the order of the appellate

authority dated 29th Nov., 2000, which is running in several pages dealing with all the objections in detail, which were raised by the petitioner. It is also submitted that the appellate authority observed that the petitioner did not choose to produce any witness in support of his any defence. Therefore, no interference in the orders passed by the courts below is called for as the petitioner was given not only reasonable but also full opportunities of hearing by the authorities before passing the orders.

I considered the submissions of learned counsel for the parties and perused the record.

It is clear from the facts mentioned above that earlier pre-audit report was not accepted by the appellate authority as a proof against the petitioner on the ground that the document was not proved. It is also clear from the remand order dated 28th Oct., 1993 that earlier order holding the petitioner guilty dated 13th June, 1989 was set aside after holding that the finding has been recorded under Section 74(1) of the Act of 1965, was without looking into even the record. It is not in dispute that after remand, again the audit was conducted, but, at the same time, it is not in dispute that the said audit report was not proved by the prosecution. It is not mentioned in any of the order that the said

pre-audit report was ever admitted by the petitioner. Not only this, but a bare perusal of the order dated 28th Sept., 1999 passed by the Regional Audit Officer clearly reveals that there is no mention that which fact was proved by the prosecution by producing evidence. The appellate authority relied upon a letter dated 19th May, 1984, which is alleged to have been written by the petitioner himself. There is no mention of this fact of admission of guilt of the petitioner in the first order dated 13th June, 1989 or in the appellate order dated 28th Oct., 1993 by which the matter was remanded or in the order, which was passed by the Regional Audit Officer after remand on 28th Sept., 1999. It appears from the proceedings taken even after remand that the said document was never the basis for holding petitioner as guilty by the Regional Audit Officer.

Not only this, but the appellate authority in its order observed that the findings recorded by the Joint Registrar, Cooperative Societies, Jodhpur in its order dated 13th June, 1989 are just and proper where the Joint Register observed that petitioner wants to delay the proceedings in the garb of seeking inspection of the record. The appellate authority also observed that one person Sh.Durgaram, who was Manager at relevant time, to save the petitioner, did not hand over the charge to the society despite the fact that there is no evidence

name sake on record in the form of oral or documentary evidence. The appellate authority further observed that the petitioner did not produce witness Parasram before the Joint Registrar, Cooperative Societies, Jodhpur or before the lower court at any time. The appellate authority also observed that the witnesses Bhanwarlal and Dhannaram were summoned by the authority, but the petitioner did not make any effort to produce these witnesses. The appellate authority in addition to above, held that the signature of Bhiyaram on the documents dated 5th July, 1987, 8th July, 1987, 9th July, 198 and 12th July, 1987 are proved and this finding has been recorded on the basis of the enquiry report only.

The above facts in detail clearly reveal that the said authorities were not sure, which document they want to rely upon and, therefore, whatever available on record, were taken as an admitted piece of evidence or the document proved against the petitioner. Whereas, in fact, it appears from the orders that all these proceedings were not produced and proved for proving the charge against the petitioner.

In view of the above, the orders passed by the Regional Audit Officer dated 28.9.99, the order passed by the appellate authority dated 29th Nov., 2000 and the order passed by the revisional authority

dated 18.12.20001 deserve to be quashed and set aside.

Since it is a matter relating to Cooperative Societies and there are documentary evidence only, therefore, even after delay, the matter can be inquired into again by the authorities, therefore, the said orders are set aside and the matter is remanded to the Regional Audit Officer, Cooperative Societies for deciding the matter afresh after serving a notice upon the petitioner in accordance with law and both the parties will be free to rely upon the evidence, which they may produce and the authority may pass a fresh order after giving opportunity of hearing to both the parties.

The writ petition of the petitioner is allowed as indicated above. The petitioner is directed to appear before the Regional Audit Officer, Cooperative Societies on 21st March, 2005. The matter may be decided by the said authority within a period of four months thereafter.

(PRAKASH TATIA), J.

c.p.goyal/-